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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2858

Introduced by Assembly Member Ridley-Thomas

February 20, 2004

An act to amend Section 5374 of, and to add Section 5384.7 to, the Public Utilities Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2858, as amended, Ridley-Thomas. Charter-party carriers of passengers: drivers and key employees: background checks.

The Transportation Security Administration of the United States Department of Transportation, administered by the ~~Under Secretary~~ *Undersecretary* of Transportation for Security, is responsible for carrying out measures to ensure aviation security, including hiring, training, and retention of personnel for the security screening of passengers and baggage and conducting background checks for individuals with access to secure areas of airports regularly serving an air carrier holding a certificate issued by the Secretary of Transportation. Individuals with specified criminal backgrounds or other factors as determined by the ~~Under Secretary~~ *Undersecretary*, are disqualified from employment with an air carrier or airport operator, if they will have access to secured areas. The ~~Under Secretary~~ *Undersecretary* is required to adopt measures to improve secured-area access control, including working with airport operators to strengthen

access control points in secured areas, including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas.

The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act requires a charter-party carrier of passengers to obtain from the commission a certificate that public convenience and necessity require the operation, except that certain specific transportation services may be conducted under authority of a permit issued by the commission. The act prohibits the commission from issuing or renewing a permit unless the applicant has met specified requirements.

This bill would require the commission to adopt regulations establishing standards and procedures to investigate the criminal background of candidates seeking certificates for employment as drivers or key employees, as defined, with charter-party carriers of passengers that provide passenger transportation to ~~and~~ *or* from airports *or railroad terminals serving passenger trains*. The bill would require the commission to restrict a charter-party carrier of passengers to employment of individuals approved for that employment by the commission, based on successful completion of the criminal background investigation. The bill would impose civil penalties for a violation of that employment restriction. The bill would require the commission to issue an identification credential to each applicant that successfully completes that criminal background investigation process and would require that all drivers employed by a charter-party carrier of passengers carry the identification credential at all times on airport property. The bill would impose civil penalties for a failure to produce the credential at the request of airport law enforcement officers. Repeated violations would be grounds for revocation of the carrier's permit. The bill would require the commission to provide for a fee to be charged of the charter-party carrier of passengers and collected by the commission, sufficient to cover certain related costs.

The bill would prohibit the commission from issuing or renewing a permit for a charter-party carrier applicant providing transportation to ~~and~~ *or* from airports *or railroad terminals serving passenger trains*



unless it certifies its drivers have successfully completed a criminal history background check and have been issued an identification credential.

The bill would prohibit employees and agents of a charter-party carrier from communicating to any other person any information related to the disqualification of a driver or key employee, and would authorize a person disqualified from employment pursuant to the provisions of the bill to request a hearing by the commission to ~~challenge the accuracy of the criminal background investigation~~ *present evidence of rehabilitation and in support of employment.*

The bill would provide that persons endorsed or certified as drivers of school pupil activity buses are deemed to meet the bill's requirements for entry into an airport or railroad terminal. The bill would require the Department of Motor Vehicles to notify the commission whenever the department determines that the holder of such an endorsement has a violation or conviction warranting suspension or revocation of the endorsement or certificate.

A violation of the act or of an order or other requirement of the commission in enforcing that act is a crime.

Because the provisions of this bill would be a part of the act and a violation of the bill's provisions or of an order or other requirement of the commission implementing those provisions would be a crime, the bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The bill would become operative on July 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to reaffirm its
- 2 commitment to homeland security as it relates to charter-party
- 3 carriers of passengers and their employees who drive passengers
- 4 to and from airports. The purpose of this act is to ensure that



1 procedures and regulations are in place consistent with the airport
2 security programs operated by airports in this state, to assure the
3 traveling public that drivers or key employees of privately
4 engaged carriers have been through security clearances, and to
5 provide uniformity in credentialing among charter-party carriers
6 of passengers.

7 SEC. 2. Section 5374 of the Public Utilities Code is amended
8 to read:

9 5374. (a) Before a permit is issued or renewed, the
10 commission shall require the applicant to establish reasonable
11 fitness and financial responsibility to initiate and conduct or
12 continue to conduct the proposed or existing transportation
13 services. The commission shall not issue or renew a permit
14 pursuant to this chapter, unless the applicant meets all of the
15 following requirements:

16 (1) It certifies on a form acceptable to the commission that the
17 applicant will maintain its vehicles in a safe operating condition
18 and in compliance with the Vehicle Code and with regulations
19 contained in Title 13 of the California Code of Regulations relative
20 to motor vehicle safety.

21 (2) It provides for a mandatory controlled substance and
22 alcohol testing certification program as adopted by the
23 commission pursuant to Section 1032.1.

24 (3) A charter-party carrier applicant providing transportation
25 ~~to and from airports~~ *or from airports, or to or from any railroad*
26 *terminal serving passenger trains*, certifies its drivers and key
27 employees have successfully completed a criminal history
28 background check and have been issued an identification
29 credential in accordance with Section 5384.7. For purposes of this
30 section, “key employees” mean the owner or partner of the
31 charter-party carrier or, if the carrier is a corporation, the officers
32 and directors of the corporation.

33 (b) (1) Before a certificate is issued or renewed, the
34 commission shall require the applicant to establish reasonable
35 fitness and financial responsibility to initiate and conduct or
36 continue to conduct the proposed or existing transportation
37 services. The commission shall not issue or renew a certificate
38 pursuant to this chapter, unless the applicant meets all of the
39 following requirements:



1 (A) It is financially and organizationally capable of conducting
2 an operation that complies with the rules and regulations of the
3 Department of the California Highway Patrol governing highway
4 safety.

5 (B) It is committed to observing the hours of service
6 regulations of state and, where applicable, federal law, for all
7 persons, whether employees or subcarriers, operating vehicles in
8 transportation for compensation under the certificate.

9 (C) It has a preventive maintenance program in effect for its
10 vehicles used in transportation for compensation that conforms to
11 regulations of the Department of the California Highway Patrol in
12 Title 13 of the California Code of Regulations.

13 (D) It participates in a program to regularly check the driving
14 records of all persons, whether employees or subcarriers,
15 operating vehicles used in transportation for compensation
16 requiring a class B driver's license under the certificate.

17 (E) It has a safety education and training program in effect for
18 all employees or subcarriers operating vehicles used in
19 transportation for compensation.

20 (F) It will maintain its vehicles used in transportation for
21 compensation in a safe operating condition and in compliance with
22 the Vehicle Code and with regulations contained in Title 13 of the
23 California Code of Regulations relative to motor vehicle safety.

24 (G) It has filed with the commission the certificate of workers'
25 compensation insurance coverage or statement required by
26 Section 5378.1.

27 (H) It has provided the commission an address of an office or
28 terminal where documents supporting the factual matters specified
29 in the showing required by this subdivision may be inspected by
30 the commission and the Department of the California Highway
31 Patrol.

32 (I) It provides for a mandatory controlled substance and
33 alcohol testing certification program as adopted by the
34 commission pursuant to Section 1032.1.

35 (2) With respect to subparagraphs (B) and (F) of paragraph (1),
36 the commission may base a finding on a certification by the
37 commission that an applicant has filed, with the commission, a
38 sworn declaration of ability to comply and intent to comply.



1 (c) In addition to the requirements in subdivision (b), class A
2 and class B charter-party carriers shall meet all other state and,
3 where applicable, federal regulations as prescribed.

4 (d) The commission may delegate to its executive director or
5 his or her designee the authority to renew, or authorize the transfer
6 of, charter-party carrier permits or certificates and to make the
7 findings specified in subdivision (b) that are necessary to that
8 delegated authority.

9 SEC. 3. Section 5384.7 is added to the Public Utilities Code,
10 to read:

11 5384.7. (a) The commission shall adopt regulations, in
12 accordance with this section and Chapter 3.5 (commencing with
13 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
14 Code, to establish standards and procedures to investigate the
15 background of candidates seeking certificates for employment as
16 drivers or key employees with charter-party carriers of passengers
17 that provide passenger transportation to ~~and from airports~~ *or from*
18 *airports, or to or from any railroad terminal serving passenger*
19 *trains*. These regulations shall direct the Carriers Branch of the
20 commission, which licenses charter-party carriers of passengers,
21 to use criminal history information to determine whether
22 applicants for employment as drivers or key employees have a
23 conviction for a qualifying felony crime that would disqualify
24 them from being hired as drivers or key employees because they
25 would be a threat to the safety of the public if employed as drivers
26 or key employees of the charter-party carrier.

27 (b) The commission shall provide, by regulation, that a
28 fingerprint-based criminal background investigation be used to
29 determine past convictions for the following specified criminal
30 acts that disqualify the applicant for employment in this capacity:

31 (1) Unlawful transportation of a hazardous material (49 U.S.C.
32 Sec. 46312).

33 (2) Carrying a weapon or explosive aboard an aircraft (49
34 U.S.C. Sec. 46505).

35 (3) Unlawful entry into an aircraft or airport area that serves air
36 carriers or foreign air carriers contrary to established security
37 requirements (49 U.S.C. Sec. 46314).

38 (4) Destruction of an aircraft or aircraft facility (18 U.S.C. Sec.
39 32).

40 (5) Violence at international airports (18 U.S.C. Sec. 37).



1 (6) Unlawful possession, use, sale, distribution, or
2 manufacture of an explosive, incendiary device, or assault
3 weapon.

4 (7) Felony arson.

5 (8) Hate crime, as described in paragraph (2) of subdivision (b)
6 of Section 628.1 of the Penal Code, including, but not limited to,
7 offenses in Title 11.6 (commencing with Section 422.6) of Part 1
8 of the Penal Code.

9 (9) Conspiracy or attempt to commit any of the criminal acts
10 listed in paragraphs (1) to (8), inclusive.

11 ~~(e) The commission shall also require, by regulation, that the~~
12 ~~criminal background investigation be used to determine the~~
13 ~~existence of any outstanding felony warrants for the arrest of the~~
14 ~~applicant for employment. If the criminal background~~
15 ~~investigation reveals one or more felony warrants, the commission~~
16 ~~shall notify the appropriate law enforcement agency of the~~
17 ~~application.~~

18 ~~(d)~~

19 (c) The commission shall ensure, by regulation, compliance
20 with Section 50.12 of Title 28 of the Code of Federal Regulations
21 as it exists on January 1, 2003, with regard to records of the Federal
22 Bureau of Investigation, and provide similar requirements with
23 regard to state records.

24 ~~(e)~~

25 (d) The commission shall require, by regulation, that a
26 charter-party carrier of passengers may only employ an individual
27 as a driver of passengers to or from airports, *or to or from any*
28 *railroad terminal serving passenger trains* or as a key employee
29 if that individual has been approved for that employment by the
30 commission, based on successful completion of the criminal
31 background investigation. This requirement shall apply
32 retroactively to drivers and key employees employed on or after
33 January 1, 2003, and to all future applicants. Employment of
34 individuals not approved as drivers or key employees by a
35 charter-party carrier of passengers shall constitute a violation of
36 the regulations and subject the carrier to civil penalties not to
37 exceed two thousand dollars (\$2,000) per incident. Repeated
38 violations of this nature shall be grounds for revocation of the
39 carrier's permit.



1 While a criminal background investigation is pending, a driver
2 or key employee may be employed by the carrier. This section does
3 not prohibit a charter-party carrier from employing a driver who
4 is disqualified pursuant to this article from being employed by the
5 carrier in a capacity that does not involve driving passengers to
6 ~~and or~~ from the airport. A charter-party carrier subject to this
7 article shall inform an applicant for employment as a driver or key
8 employee, both on the employment application and through oral
9 communication, of the requirements of this chapter and the
10 consequences that may occur if the driver or key employee is
11 disqualified from employment. If the charter-party carrier is a
12 subcarrier that does not employ any drivers other than the holder
13 of the permit to operate as a charter-party carrier, the subcarrier
14 shall be treated as an employee of the parent carrier for the
15 purposes of complying with the criminal background check
16 requirements of this section and Section 5374.

17 ~~(f)~~

18 (e) The commission shall require, by regulation, that
19 charter-party carriers of passengers require applicants who are
20 offered employment as a driver of a motor vehicle providing
21 passenger transportation to ~~and from airports~~ *or from airports, or*
22 *to or from any railroad terminal serving passenger trains*, or as a
23 key employee, to submit fingerprints and other pertinent
24 information, as required by the regulations, to the commission for
25 the purpose of obtaining criminal background information.

26 ~~(g) The commission shall transmit the fingerprints to the~~
27 ~~Department of Justice. The Department of Justice shall conduct~~
28 ~~the check, and forward the request for federal level criminal~~
29 ~~offender record information to the Federal Bureau of~~
30 ~~Investigation. The Department of Justice shall provide the~~
31 ~~following information to the commission:~~

32 ~~(1) Every conviction rendered against the applicant.~~

33 ~~(2) Every arrest for an offense for which the Department of~~
34 ~~Justice has determined that the applicant is presently awaiting trial;~~
35 ~~or whether the applicant is incarcerated or has been released on bail~~
36 ~~or on his or her own recognizance pending trial.~~

37 ~~(3) Every warrant for the arrest of the applicant.~~

38 (f) *The commission shall require an applicant who is described*
39 *in subdivision (e) to have his or her fingerprint images captured*
40 *and related information provided for submission to the*



1 Department of Justice for the purpose of obtaining information as
2 to the existence and nature of any record of state or federal
3 convictions and state or federal arrests for which the Department
4 of Justice establishes that the applicant was released on bail or on
5 his or her own recognizance pending trial. Requests for federal
6 level criminal offender record information received by the
7 Department of Justice pursuant to this section shall be forwarded
8 to the Federal Bureau of Investigation by the Department of
9 Justice.

10 (1) The Department of Justice shall respond to the commission
11 with information pursuant to subdivision (p) of Section 11105 of
12 the Penal Code.

13 (2) The Department of Justice shall assess a fee sufficient to
14 cover all of its processing costs generated from or associated with
15 the implementation of this section.

16 (3) The commission shall request, from the Department of
17 Justice, subsequent arrest notification as provided by Section
18 11105.2 of the Penal Code, for all applicants described in
19 subdivision (e).

20 ~~(h)~~

21 (g) The commission shall review all information received from
22 the charter-party carrier of passengers and the Department of
23 Justice pursuant to the regulations. All information received by the
24 commission shall be held as confidential, except that if
25 employment is to be denied based on criminal history information,
26 the commission shall notify the charter-party carrier of passengers
27 of the applicant's disqualification, and provide a copy of the
28 history and an explanation of the denial to the applicant.
29 Employees and agents of a charter-party carrier of passengers are
30 prohibited from communicating to any other person any
31 information related to the disqualification of a driver or key
32 employee. A person who is disqualified pursuant to this section
33 may request a hearing by the commission to ~~challenge the accuracy~~
34 ~~of the criminal background investigation and to present present~~
35 evidence that, notwithstanding the grounds for disqualification, he
36 or she is fully rehabilitated and should be permitted employment.
37 The commission may grant any relief it deems appropriate,
38 including restoration of the right of employment.

39 ~~(i)~~



1 (h) The commission shall provide, by regulation, that an
2 identification credential be issued to each applicant that
3 successfully completes that criminal background investigation
4 process.

5 ~~(j)~~

6 (i) The commission shall provide, by regulation, that all drivers
7 and key employees employed by a charter-party carrier of
8 passengers shall carry the identification credential at all times on
9 airport property, and shall produce the credential for inspection
10 upon request of airport law enforcement officers. Failure to
11 produce the credential at the request of airport law enforcement
12 officers shall constitute a violation of the regulations and subject
13 the driver and the carrier to civil penalties not to exceed five
14 hundred dollars (\$500) per incident. Repeated violations of this
15 nature shall be grounds for revocation of the carrier's permit.

16 ~~(k)~~

17 (j) The commission shall provide, by regulation, for a fee to be
18 charged of the charter-party carrier of passengers, to be collected
19 by the commission, sufficient to cover the costs of the commission
20 ~~and Department of Justice~~ for processing fingerprint records,
21 reviewing documents, and issuing identification credentials
22 pursuant to this section. *The fee shall include any fee assessed by*
23 *the Department of Justice pursuant to this section.* An employee
24 or applicant for employment may not be charged a fee for the
25 performance of the criminal background check required by this
26 section, *other than a fee charged for the capture of the fingerprint*
27 *image and obtaining the related information.*

28 ~~(l)~~

29 (k) *Any person with an endorsement or certificate authorizing*
30 *operation of a school pupil activity bus pursuant to Section 13369*
31 *of the Vehicle Code shall be deemed to have met the requirements*
32 *of this section for entry into an airport or railroad terminal. The*
33 *Department of Motor Vehicles shall notify the commission*
34 *whenever it determines that a disqualifying violation or conviction*
35 *exists under Section 13370 of the Vehicle Code to suspend or*
36 *revoke an endorsement or certificate for operation of a school*
37 *pupil activity bus. The notice shall identify the individual and the*
38 *cause for suspension or revocation.*



1 (l) For the purposes of this section, “key employees” mean the
2 owner or partner of the charter-party carrier or, if the carrier is a
3 corporation, the officers and directors of the corporation.

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 SEC. 5. *This act shall become operative on July 1, 2005.*

